

REMARKS

The specification has been amended. Claim 1 has been amended.

The Examiner has objected to the disclosure because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant has amended the specification to remove the hyperlink. Withdrawal of this objection is respectfully requested.

The Examiner has rejected claims 1-8 and 34-35 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner has rejected claim 1 because the phrase "inducible regulatory sequence" is unclear. Applicant directs the Examiner's attention to page 3 lines 19-21 of the specification where "regulatory sequence" is defined as "a sequence of DNA concerned with controlling expression of a gene; e.g. promoters, operators and attenuators." An "inducible regulatory sequence" therefore, is a sequence of DNA concerned with controlling expression of a gene, said sequence being inducible. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 1 because the term "operably linked" is ambiguous. The Examiner's attention is drawn to page 4 lines 33-35 and page 5 lines 1-5 of the specification where it is stated "A nucleic acid sequence is operatively linked when it is placed into a functional relationship with another nucleic acid sequence." Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 1 because the phrase "contained within the genome" is ambiguous. Applicant has amended claim 1 to clarify this phrase. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 7 because the meaning of the term in parentheses is unclear. The term Pi 2(noc) is the name of the promoter and is the standard way of identifying this particular promoter. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1 and 3 under 35 U.S.C. §102(b) as being anticipated by Recorbet, et al. Applicant submits that Recorbet et al teaches using an inducible regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *E. coli* for the purpose of controlling microorganism populations in soil. In contrast, the present invention teaches the use of an inducible

regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *A. tumefaciens* or *A. rhizogenes* for the purpose of removing *A. tumefaciens* or *A. rhizogenes* from plant genetic engineering systems once the gene or genes of interest have been transferred from the bacteria to the plant cells. The present invention obviates the use of antibiotics which are typically used to eliminate *Agrobacterium* from plant genetic engineering systems. Therefore, the present invention is different and novel from what is discussed in Recorbet et al. Withdrawal of this rejection is respectfully requested.

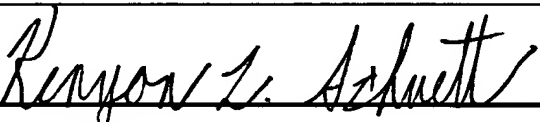
The Examiner has rejected claim 2 under 35 U.S.C. 102(b) as being anticipated by Fouet et al. Applicant submits that Fouet, et al. teach a recombinant nucleotide sequence comprising an inducible regulatory sequence other than SacR operatively linked to a nucleotide sequence encoding a partial levansucrase gene. In addition, Fouet et al. teach the complete removal of the levansucrase gene so that a different gene may be inserted in its place in a vector placed in *B. subtilis*. In contrast, the present invention is directed to the use of the entire levansucrase gene and the entire levansucrase gene is placed inside *Agrobacterium* instead of *B. subtilis*. Therefore, the present invention is different and novel from what is discussed in Fouet et al. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 4 and 5 under 35 U.S.C. 102(b) as being anticipated by Hamilton, U.S. Patent No. 5,733,744. Applicant submits that Hamilton teaches the use of the sacB gene from *B. amyloliquifaciens* as a positive selection marker for plasmid vectors inserted into *A. tumefaciens*. That is, when a DNA fragment is inserted into a vector (which is inserted into *A. tumefaciens*) containing the sacB gene and a nearby BamHI cloning site, the sacB gene is disrupted allowing *A. tumefaciens* to grow on a medium containing sucrose. In contrast, the present invention does not involve the use of the sacB gene as a marker. It involves the use of levansucrase as a method of eliminating *Agrobacterium* from plant genetic engineering systems after *Agrobacterium* has been used to transfer one or more genes of interest to one or more plant cells. Therefore, the present invention is different and novel from what is discussed in Hamilton. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1-3, 6-8 and 34-35 under 35 U.S.C. 103(a) as being

unpatentable over Recorbet et al. as applied to claims 1 and 3, and further in view of applicant's admitted prior art. Applicant submits that Recorbet et al teaches using an inducible regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *E. coli* for the purpose of controlling microorganism populations in soil. In contrast, the present invention teaches the use of an inducible regulatory sequence operatively linked to a nucleotide sequence encoding a levansucrase contained within the genome of *A. tumefaciens* or *A. rhizogenes* for the purpose of removing *A. tumefaciens* or *A. rhizogenes* from plant genetic engineering systems once the gene or genes of interest have been transferred from the bacteria to the plant cells. The present invention obviates the use of antibiotics which are typically used to eliminate *Agrobacterium* from plant genetic engineering systems. Therefore, the present invention is novel and nonobvious over the prior art.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102, 103 and 112. Reconsideration of this application and early notice of allowance is requested.

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